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## ABSTRACT

Westerners applied multiple normative frameworks in debating policy toward China in the wake of the Boxer Uprising in 1900 and 1901. They variously claimed that treatment of China should be governed by the rules of international law, a code of honor, Christian teachings, the judgment of history, or ill-defined norms of civilization. At other times, however, Westerners called for violence against the Chinese without any meaningful normative basis. The law and the legal discipline have an imperializing character, as the law conceptually tends to subordinate other normative frameworks to itself and integrate them into its own normative order, dubbed law. The debate concerning China in 1900 illustrates that legal norms were inextricably and complexly entangled with other norms. It suggests that legal historians, if they are to grasp the past in its full richness, should attend to multiple normative frameworks beyond the law, since legal history cannot be divorced from its wider context. Moreover, scholars applying the lens of multinormativity should recognize that, at some point, norms end and a-normative arguments begin.

Keywords: multinormativity; international law; honor; Boxer Uprising; a-normativity

## I. Introduction

In the summer of 1900, simmering unrest in northern China boiled over into open conflict as the Chinese government backed the grassroots, anti-foreign movement known in the West as the Boxers. Following the death of Germany's envoy to China, Baron Clemens von Ketteler, at the hands of the Chinese on June 20 and the subsequent siege of the foreign legations, an undeclared war pitted China against all the foreign states, one in which around 250 foreigners and many more Chinese lost their lives. As armed forces from eight countries gathered on the coast at Dagu, advanced on Beijing, relieved the beleaguered foreigners, and then

sacked the city, a vigorous debate opened concerning what ought to be done about China. That discussion continued through the fall and into the spring of 1901 as the foreign powers and China negotiated a settlement of the conflict, one finally signed in September 1901.[1]

I will consider the following questions regarding that debate. What norms operated among Westerners as they considered what action to take against China and those Chinese who engaged in or fomented violence during the Boxer Uprising? To what extent did international law shape that debate? What competing normative frameworks grounded those arguments? How did those norms relate to each other? To what extent were positions advanced that were wholly a-normative? Where do norms ultimately end and something a-normative begin?

Law, of course, is a set of rules or norms. The theoretical perspective of multinormativity posits that law represents simply one set of norms, which can exist alongside, or overlap with, other sets of norms, such as religious teachings. For legal historians, concern with multinormativity widens the field of inquiry to see where law intersects – or does not – with other normative frameworks.[2] The difficulties of specifying the characteristics of a particular norm, as opposed to other norms, or as against the utter absence of a norm should not be underestimated. Indeed, they outstrip the considerable challenges inherent in a legal pluralist analysis that attempts to define »what *isn't* law.«[3] That said, a norm provides a principled basis for acting. The notion that something may be legal – but not right – illustrates that law does not exhaust relevant normative frameworks in any situation. The fact that sometimes people urge action with regard only to interest, and without reference to principle, suggests that it is indeed possible to identify what *isn't* normative.

Although scholars have not expressly addressed multinormativity in examining Western treatment of China at the close of the nineteenth century, a couple of different perspectives have emerged in the historiography of the Boxer Uprising regarding the importance of law. The first regards the Boxer Protocol of 1901 that settled the conflict as a frank expression of Western imperialist depredations against China, a campaign more noteworthy for its unprincipled rapacity than any normative grounding.[4] Isabel Hull has argued in this vein that the German military in China and elsewhere went to extremes of violence while disregarding international law. An institutional culture within the German military prescribed the rejection of any norms that might impede the annihilation of the enemy.[5] Hull's interpretation, however, has been justly faulted by Susanne Kuß and Dietlind Wünsche for failing to explore ful-

[1] For an excellent, compact narrative, see Cohen (1997).

[2] On multinormativity, see Duve (2017); Duve (2014); on the intersection of honor and law in Imperial Germany, see Collin (2017).

[3] Halliday (2013) 264.

[4] Peters (2012) 40. The entry notes regarding the Boxer Protocol of 1901: »Because of its humiliating clauses – infliction of punishments on Boxer leaders and high indemnities – it is often regarded as the summit of the unequal treaties with China.«

[5] Hull (2005) 131-158.

ly the ways in which German military and political leaders tried to legitimate the campaign in China and to recognize ways in which violence against the Chinese in fact met restraints.[6]

More recently, historians have begun to examine whether and how Westerners employed ideas concerning law in the Boxer Uprising and in Sino-Western relations more broadly. Li Chen's recent book, which focuses mainly on the meeting of the Chinese and British empires in the century leading to the First Opium War, underscores the importance of law in those imperial contacts. British advocates of war against China in 1839, for example, contended that the conflict really concerned upholding property rights under law, not the unseemly business of selling opium.[7] The legal historian Gregory Gordon similarly discerns the advance of legal procedural norms in China in the fall of 1900 as Western military officers established an international tribunal at Baoding to investigate and try Chinese officials for their roles in the killing of Christians in the city during the summer. Gordon believes that Westerners refrained from simply executing all Chinese officials in the town and opted for establishing a tribunal because rising pacifist sentiment had »instilled in the colonial overlords a normative preference for multilateral and judicial dispute resolution.« Besides the growing influence of pacifism, Gordon notes that imperialism also played an important role, as it explained how Westerners were in a position to punish Asians at all.[8] Gordon and Chen offer a useful corrective to a prevailing view that law had no relevance to the Western treatment of China.

Whereas the historiography is clearly divided on the question whether legal norms played a role in Western treatment of China, there remains the question whether other norms that were not narrowly or specifically legal shaped the contours of debate concerning China. How did imperial projects fit into the normative world at the beginning of the twentieth century? Gordon does not seriously contemplate the possibilities of exploring other non-legal norms that also shaped the encounters between Westerners and Chinese in 1900 and 1901. On the other hand, James Hevia sees British imperialist policies toward China as a project of teaching the Chinese to be more like the English – to be more civilized. Lawfulness was often an important part of the lessons the British sought to teach the Chinese, but there was more to it than that.[9] Benjamin Coates's 2016 study *Legalist Empire* sheds further light on law's relationship with imperialism during the era of the Boxer conflict. Like Hevia, he does not expressly employ the concept of multinormativity, but he argues that around the turn of the twentieth century »empire was itself an international norm that was part of, not external to, the law.« Both the norms of empire and law, in Coates's explanation, in turn drew from Darwinist ideas and the notion of a civilizing mission, in »a particular vision of civilized modernity.«[10] Coates claims to resolve the apparent tension between law and

6 Kuss (2010); Wünsche (2008).

7 Chen (2016).

8 Gordon (2015) 178-179, p. 178 for the quotation.

9 Hevia (2003).

10 Coates (2016) 7 and 10; see also p. 58 (»Thus did [an] appeal to civilization become part of law itself.«) and 178-179 (»legalists instinctively felt« the truth of the »concept of ›civilization‹ « as both »inevitable« and »desirable«).

the norm of empire by extending the reach of law to cover other norms. His work of legal history illustrates that law and the legal discipline have an imperializing character of their own, as the law conceptually tends to subordinate other normative frameworks to itself and integrate them into its normative order, dubbed law. Law's imperializing move may seem abstract, but in fact, lawyers and legal historians offered arguments that organized various norms according to their disciplinary and professional framework. They did not do so in bad faith. They looked at the world from the perspective of law and fit complex realities into that perspective. That approach by Gordon, Chen, and other legal historians, however, tends to squeeze a bit more into the legal category than comfortably fits.

By considering multinormativity in Western debates concerning China in 1900, we can discern that imperializing process of law and recapture the complexity, messiness, and interconnectedness of the historical reality. Western political leaders, diplomats, lawyers, journalists, missionaries, and others advanced arguments on a wide variety of grounds appealing to various normative orders, systems that could conflict or coincide, just as the particular remedies prescribed for China could. It is important to underscore the great multiplicity of participants who offered arguments about what should be done with China in 1900 and 1901.[11] People from all eight of the countries that sent troops to China publicly took positions on what ought to be done. The debate at times amounted to a cacophony. Indeed, it is probably more accurate to speak of multiple *debates* concerning China rather than a single, coherent, focused debate on a precisely specified question. No single person in 1900 could pretend to have listened to every voice speaking on the subject. The challenge for any historian to survey comprehensively all of the debates is correspondingly great, and is more than this short research paper can claim to have mastered. Instead, what I hope to achieve here is to explore the salient positions that surfaced in the multiple debates from the time and see how different normative frameworks surfaced in them and shaped them.

Westerners variously claimed that policy toward China should be governed by the rules of international law, a code of honor, Christian teachings, the judgment of history, or ill-defined norms of civilization. At other times, however, Westerners called for violence against the Chinese without any meaningful normative basis.

## II. Law

From the beginning to the end of the Boxer conflict, Westerners continually insisted that Chinese had committed clear violations of international law and that the guilty parties deserved punishment for their criminal actions. The killing of Germany's envoy to China and

[11] Japan occupied a unique position as an Asian country that had only recently attained a sort of revocable guest membership in the club of »civilized,« Western nations, an achievement to which its leaders attached considerable importance. See Lai (2014). This paper only briefly touches on Japanese arguments.

the attack on the foreign legations, indeed, contravened the well-settled principle that diplomatic envoys enjoyed protection under international law.[12] Article II of the Boxer Protocol of September 1901 expressed this legal perspective most clearly as it specified punishments ranging from beheading to exile and degradation for several Chinese officials deemed to have been »the principal authors of the outrages and crimes committed against the foreign Governments and their nationals.« International law further found expression in a provision memorializing the posthumous rehabilitation of Chinese officials who had been killed during the conflict »for having protested against the outrageous breaches of international law« committed by the Boxers and their supporters.[13] Beyond the formal legal instrument that officially resolved the Boxer conflict, the flood of discussion in 1900 frequently emphasized that China had violated international law and therefore deserved punishment.[14]

The prominent scholar of international law Lassa Oppenheim integrated the events of the Boxer Uprising and its suppression into a legal framework in his 1912 edition of his treatise on international law. He explained, fairly straightforwardly, that the killing of Germany's minister to China and the assault on the foreign legations in the capital was found to »necessitate united action of the Powers against China for the purpose of vindicating this violation of the fundamental rules of the Laws of Nations.«[15] Clearly, legal norms applied to actions in the Boxer Uprising, and their contravention suggested that action should be taken. Oppenheim's subsequent interpretation of the events and their consequences applied a smooth legal gloss to the matter.

## III. Honor

The rules of law, however, did not exhaust the normative principles that influenced Western decision-making during the Boxer Uprising. Arguments about the nature of the offenses committed by the Chinese and what ought to be done to remedy them frequently cast matters in terms of honor or dignity. Western obsessions with honor have a long history. In the seventeenth century, when states and international law began to assume a recognizably mod-

12 See Wheaton (1904) §§ 206, 224; Heinze (1901) 4.

13 U.S. State Department (1902) 312-327, p. 313 for the quotation.

14 See, e.g., Kölnische Zeitung (Wochen-Ausgabe) (5 July 1900) 3 (underscoring the need to ensure »that such ignominious violations of international law never recur«); Satow (n.d.) 81 (British Minister Ernest Satow cited China's violation of the »laws of humanity«); Whitehead to Salisbury, 18 July 1900, in China No. 1 (1901): Correspondence Respecting the Disturbances in China (1901) 19 (Viscount Aoki of Japan stated that an attack on diplomatic envoys represented »the gravest breach of international law« possible); Le Temps (20 October 1900) 1, in gallica.bnf.fr / Bibliothèque nationale de France (French Minister Pichon stressed that China had violated international law); Martin (2002).

15 Oppenheim (1912) § 50. I am grateful to Donal Coffey for pointing me to this edition of this source.

ern character, conceptions of honor played an organizing role in public and private life.[16] At the end of the nineteenth century, questions of honor retained considerable importance in Europe.[17] In some respects, the fascination with honor reflected and supported the continuing pretensions of European aristocrats to prominence in society and political life. At the same time, jingo enthusiasts from the lower ranks of society also cherished national honor, but with a distinctly more modern, populist valence.[18]

The Chinese, the argument often went, had insulted the honor of a Western nation, and Westerners therefore had a right to obtain satisfaction. As one might expect, German officials exhibited a strong tendency to view matters in this way, painting the killing of the German Emperor's envoy to the Middle Kingdom as an insult to the country's honor.[19] Thus, in his defense of government policy in the Reichstag in November, Chancellor Bernhard von Bülow stressed that the killing of Germany's minister had »severely injured not only international law, but also our national dignity.«[20] Bülow understood that a single wrongful act had infringed both the legal code, and a distinct norm regarding respect for national dignity.

Law and national dignity were not always as patently separate as in Bülow's formulation, for a state's honor could be seen as a legal matter.[21] Lassa Oppenheim, for example, affirmed that each state belonging to the »Family of Nations possesses dignity as an International Person.« Indeed, the immunity of envoys was a right flowing from the dignity of a state according to Oppenheim. Furthermore, each state had the obligation to »prevent its subjects from such acts as violate the dignity of foreign States, and must punish them for acts of that kind which it could not prevent.«[22] Oppenheim drew on Robert Phillimore's earlier work discerning »a natural Equality among States.« That principle of equality underpinned »those external marks of honour and respect,« regarding which sovereigns and their agents frequently

16 See, e.g., Swart (2016); Grotius (ca. 1604; 2006) 437-461, examining honor and whether the Dutch seizure of a Portuguese ship met its requirements.

17 See Collin (2017).

18 See Nye (1998); Offer (1995); Frevert (1995); Mayer (1981).

19 Bülow (1924) 131. See also Scheibert (1901) vol. 2, p. 241.

20 Bülow (1901) 12. Bülow explained that Germany demanded »appropriate satisfaction for the misdeeds committed.« Ibid., 13. Representative Lieber later echoed Bülow's claim in the same debate. Ibid., 16.

21 Li Chen argues that British contentions regarding injuries to national honor in 1839 illustrated the importance of the law to the British conception of the dispute. Whereas Chen makes a sound argument based on Hugo Grotius's writing that an insult to national honor could be seen as infringing a property »right to a good name« and thus constitute a legal wrong, there is less evidence that the British in 1839 in fact understood national honor as a legal matter. See Chen (2016) 214-215, citing Grotius (ca. 1604; 2006) 102-107, p. 103 for the quotation. The part of Grotius's work that Chen discusses was not from the only chapter of the work published before 1868. See ibid., xxi and xxii. Grotius indeed accorded considerations of honor a central place in that work, rejecting the contention that, although the Dutch seizure of a Portuguese ship was just, it was »not entirely honourable.« He asserted that whatever was just was necessarily honorable, but he noted that not all actions »permitted by some civil law« were »just.« Ibid., 437 and 438.

22 Oppenheim (1905) §§ 120 and 121.

expended a good deal of energy.[23] The existence of this principle of state dignity suggests that the argument that states had a right to protect their honor could be seen as a legal matter.

However, some Westerners who called for vindicating national honor rejected the underlying principle of sovereign states' equality in the same breath. This dynamic operated in October 1900, as two plenipotentiaries appointed by the Chinese imperial court to settle matters with the foreign powers submitted a proposed draft convention in which the emperor acknowledged that the siege of the foreign legations had violated international law. China proposed to pay an indemnity and promised that following an investigation directed by the Chinese, any officials found to be guilty would »be severely punished according to Chinese law.«[24] The *Times* of London condemned the proposal as inadequate and insulting. Its tone was »characteristically arrogant as if the position were that of China offering terms, not of Europe dictating them.«[25] The newspaper condemned the Chinese failure to punish guilty officials immediately. »Fruitful negotiations cannot begin«, the paper opined, »until China has been taught her place,« one distinctly inferior to that of the civilized Western powers. The paper therefore supported rejection of the proposal to pay an indemnity as insufficient. Indeed, the notion that the British and their allies would »take money for their injured honour and for the lives of their murdered subjects« seemed to affront the sensibilities of the *Times*.[26] The newspaper clearly treated the subject as a matter of honor. At the same time, it rejected the idea of China's equality with Western states, which was the principle grounding recognition of a state's honor as a matter of international law.

The Boxer Protocol's settlement of the conflict addressed the demands of honor in its terms. It did so expressly in Article III, which provided that, in order »to make honorable reparation for the assassination of« Japanese diplomat Akira Sugiyama, the Emperor of China had appointed a representative to convey his regrets to the Emperor of Japan. Considerations of national dignity and prestige also formed a basis for the requirements of Article I of the Protocol, which provided for a similar mission to Germany to convey regrets for the killing of Baron von Ketteler, as well as the erection of a monument to him at the location of his death in Beijing. The monument was to bear an inscription in Chinese, German, and Latin expressing »the regrets of His Majesty the Emperor of China for the murder committed.«[27] The Protocol, a legal document, signaled that the dictates of honor could be addressed within the framework of law. Neither Article I nor Article III, however, explicitly mentioned legal obligations. The requirements that China create a monument and apologize for the killings of leading diplomats instead underlined the code of honor's distinct normative character.

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23 Phillimore (1871) 42-43.

24 U.S. State Department (1902) 41.

25 Times (1900a) 3.

26 Times (1900a) 7. In the end, the foreign powers deigned to accept in the Boxer Protocol of September 1901 an indemnity of 450 million taels of silver, which amounted to just under $340 million. Article VI, in U.S. State Department (1902) 308.

27 U.S. State Department (1902) 313-314.

## IV. Christianity

Westerners zealously sought to protect their legal rights enshrined in the unequal treaties and to guard their honor against insults from the Chinese, but many of them also regarded China as a field for the spread of the Christian Gospel. As with any normative code, Christianity provoked vigorous debate among its adherents regarding what, precisely, its normative principles were and what they meant in practice. Within the community of missionaries in China, profound disagreements occurred concerning how to respond to the Boxer Uprising. One of the more interesting debates about policy toward China emerged among missionaries considering the question whether they should seek indemnity from the Chinese for losses suffered during the Boxer Uprising. Bishop George Evans Moule argued that missionaries had a right under international law to claim for damages caused by the actions of the Chinese government, but, based on the dictates of Christianity and considerations of prudence, he recommended that missionaries should refrain from doing so.[28]

The American Presbyterian missionary Frank Herring Chalfant disagreed with Moule, and he mobilized norms regarding honor to transform a *right* to obtain indemnification into a *duty* to do so. Like many Westerners, he pointed to the treaties that China had entered. Less typically, he noted that those agreements reflected China's position of »diplomatic equality« with Western states. Although Chalfant did not expressly use the term *law* in supporting this point, his claim that the grant of comity by the members of the family of civilized nations imposed a responsibility on China to live up to its treaty obligations amounted to an embrace of legal norms. Chalfant's key rhetorical move, though, was to discern a »duty« resting on missionary societies to seek indemnification as a means of »maintaining national honor and dignity.«[29] Although that obligation overlapped considerably with the rules of international law, imperatives of national dignity were not wholly subsumed under legal principles. In Chalfant's formulation, law and honor were not coequal, as they were in Bülow's, but they remained distinguishable. More generally, Europeans saw a code of honor as distinct from, although by no means necessarily incompatible with, the principles of international law.

## V. »The Bar of History«

In October of 1900, the prominent Heidelberg University law professor Georg Jellinek weighed in on the question of the treatment of China. Jellinek, a liberal who sought in his scholarship to reconcile positivism with both idealism and evolutionary thought, argued that

[28] Moule (1900).

[29] Chalfant (1900); Shavit (1990) 88. For another argument by an anonymous author mixing Christian teachings with the dictates of honor, see The North-China Herald and Supreme Court & Consular Gazette (1900a) 568.

international law did not govern the treatment of China, because China stood »outside the community of international law.« Europeans accordingly operated unbound by legal shackles in their waging of the conflict with China. Jellinek nevertheless believed they should conduct themselves humanely in China, »not because China may call on … a right« to such treatment, but because Western countries would be judged »before the bar of history (*vor dem Richterstuhl der Geschichte*).« He further supported moderation because eventually China would one day »be admitted into the community of international law.«[30] Jellinek declined to delineate precisely the principles against which Western countries' treatment of China would be measured before the bar of history, but he clearly imagined a judgment rendered on the basis of some set of principles. So, even where the law did not apply, norms of proper conduct could not be ignored in Jellinek's view.[31]

## VI. Civilization

Lurking behind and linking many of these normative frameworks stood an ill-defined sense of civilization, which often served as a catch-all for the various aspects of proper behavior.[32] The missionary Frank Chalfant characterized the ultimate goal uniting foreigners as »the cause of delivering China from herself« in order to help the country acquire the blessings of »that great something which we vaguely call Western civilization.«[33] In the imagination of Europeans, civilized peoples adhered to the rule of law, behaved honorably, believed in Christianity, lived in well-governed states, engaged in commerce, and understood that history was the story of progress. China stood as affront to all of that. Imperialists committed to a civilizing mission framed the Boxer conflict as one that pitted barbarism against civilization.[34]

## VII. A-Normativity

Some voices in 1900, however, urged nakedly unprincipled policy. The most infamous demand for violence against the Chinese came from Kaiser Wilhelm II, who addressed German

[30] Jellinek (1900) 401-403, p. 403 for the quotations. On Jellinek, see Keller (1995); Stolleis (1992) 450-455. Jellinek's argument is addressed in Lai (2014) 307-308.

[31] In a subsequent, lengthy study, Wolfgang Heinze disagreed with Jellinek's position that China was not within the family of civilized states, noting that China had participated in the 1899 Peace Conference at The Hague and sent its own envoys to Western countries. Heinze (1901) 169-173, 178.

[32] For a critical reading of the prevalence of vague ideas in the West concerning civilization and their importance in Western dealings with China in the nineteenth century, see Lai (2014).

[33] Chalfant (1900).

[34] Bülow (1901) 12; Hevia (2003).

soldiers shipping out on July 27, 1900, at the peak of the crisis. His speech made a glancing reference to norms of military discipline, but in a crucial passage, Wilhelm dropped the gloves and instructed his troops to take Attila the Hun as their model and to act so that no Chinese would »dare even to look askance at a German« for a thousand years.[35] He advocated a policy of terrorizing the Chinese into submission, a program devoid of normative grounding.

Kaiser Wilhelm stood out as the most prominent advocate of treating China without regard to norms, but he had considerable company. Other Westerners recommended violence against the Chinese in the wake of the Boxer Uprising that could not be legitimated in principle. In September 1900, after Beijing had fallen, but before negotiations between the Western powers and China had begun, Edgar Pierce Allen, an American lawyer living in Tianjin, China, sketched out the challenges he saw in making an effective settlement in a piece in the *North-China Herald*. Allen had been born in China and his father, Dr. Young Allen, was a prominent missionary who was originally from Georgia and had received significant recognition from the Chinese government for his service to the country.[36] Edgar Allen took a dim view of China, contending that it stood on a distinctly lower moral plane than did the Occident. Although Allen claimed that Chinese rules of punishment amounted to a primitive form of law, in the end he asserted that the Chinese had no respect for the law and operated based on calculations of fear and expediency. Since China was still in the » ›Dark Ages,‹ « only brutal punishments would impress its people. If the West declined to descend to that level or to employ Russians or Japanese to be »cruel by proxy,« then Westerners in China could expect no lasting safety. Allen reasoned that »cruelty is relative, and that what we now uphold as necessary deterrent punishment may in less than a hundred years hence be shuddered at in turn as unnecessary inhumanity.«[37] This relativistic argument was premised on the importance of historical change, but Allen drew rather different conclusions than did Jellinek. Norms, in Allen's view, did not translate across the boundaries of civilizations at different stages of evolution.

The editor of the *North-China Herald* promptly rebutted Allen's argument, insisting that Western »civilisation is not required to depart from its high moral standard and descend to the moral plane of China in order to adequately punish the guilty Chinese.« If the Chinese government was proved to have directed the anti-Western line, then foreign states would have the right »to take action directly against that Government, and the remedy for such action can be found in the Code of International Law.« The writer, like many Westerners, focused on foreigners' legally protected rights specified in the treaties that China had entered and drew conclusions that diverged from those of Jellinek. »When China entered into treaties with Western Powers, she became a party to an International compact, the safeguards and remedies of which are clearly defined in the International Code.« The provisions of

35 Penzler (1900) 211; Sösemann (1976); see also Schroer (2016) 31-32.
36 New York Times (1909).
37 Allen (1900a).

international law conferred rights on China, so long as the Chinese met their obligations under them. If China failed to meet those responsibilities, however, European states »would be justified in determining a Government for China to meet the requirements of International Law.«[38] Eschewing references to any legal authority, the writer instead buttressed the appeal to law through vigorous capitalization that aimed to confer august status on words like *International* and *Code* and *Law*.[39] While the soundness of the argument was doubtful, this position clearly aimed to frame a legal basis for measures against China.

Edgar Pierce Allen wrote a reply to the *North-China Herald*'s leader's response, asserting that the paper had misunderstood his position. Allen agreed that Western governments should capture and punish any guilty individual Chinese official and could do so without departing »from our moral plane.« However, he maintained that those punishments would not »be effective as against the people generally.« And, the Chinese people were the problem. »The Chinese people are guilty of perpetrating or abetting or acquiescing in outrages against the innocent. If we wish to punish this people effectively we must punish barbarously, not seeking out merely the openly guilty individual, but revenging ourselves upon the innocent as well. That is the Asiatic way. It is the only effective way to convince the Asiatic. But it is not our way, and, failing that, we have no short way of convincing the Asiatic.« Allen believed that Westerners were somehow incapable of administering »wholesale punishment . . . in cold blood.«[40] Ultimately, Allen favored punishing any guilty Chinese the foreign powers could get their hands on, even though he maintained that such action would be useless. Over his call for violence against the Chinese hung an air of resignation and futility.[41]

## VIII. Conclusion

Some participants in the debates over China were more powerful than others and certain interventions proved more consequential than others. The ministers of the various powers who worked out the terms of the Boxer Protocol that legally settled the conflict played a central role. Yet, others too played a meaningful role, even if it is challenging to specify the impacts of their actions precisely. English missionaries who debated whether an indemnity should be imposed on China set the stage for activities in China after 1901. An American lawyer,

38 The North-China Herald and Supreme Court & Consular Gazette (1900b) 593. If the Chinese government was not complicit, then the piece argued that guilty individuals could be punished under Chinese law.

39 International law did not recognize a right to change the government of a sovereign state. See Oppenheim (1905) §§ 123-126, on the aspects of sovereignty, especially § 126, stating that states are »bound not to intervene in the affairs of other States.«

40 Allen (1900b).

41 Allen, who continued to work as a lawyer in China, did not substantially change his view in the succeeding years of the Chinese as a lawless people, authoring a short article eighteen years later that rehearsed the same arguments he penned in 1900. Allen (1918).

frustrated by the perceived futility of legal sanctions on the Chinese, urged violence against the Chinese, thereby exemplifying a durable pattern in Western views of the Chinese. If legal historians are to understand the origins and course of legal developments, they should attend to arguments that may seem peripheral to the center of where the action really seemed to be: the conference table in Beijing.

This brief survey shows that Westerners applied a variety of normative frameworks in debating policy toward China in the wake of the Boxer Uprising. Disagreements emerged in that debate, which at times became quite pointed. The application of the lens of multinormativity affords several insights into that controversy. First, by highlighting connections between law and other non-legal frameworks, the theory suggests that legal historians should extend their research beyond traditional legal sources to other sources that may affect the legal picture. In the case of the debate concerning China in 1900 and 1901, the newspaper press and opinion among missionaries shaped legal responses to China. Legal history in this case cannot be divorced from its wider context.[42] In addition, bringing multinormativity to the table helps to illuminate how legal norms connected to other ideas about how the world ought to work. Ultimately, multinormativity reveals the complexity of the situation. By considering the question whether normative frameworks distinct from the code of international law informed Western calculations about what to do about the Chinese, we can make out those other ideas circulating at the time. International law did not exhaust the possible normative frameworks. Matters were more complicated than that. For those like Jellinek, who believed international law did not govern, moral principles nevertheless could not be evaded altogether. And, for others who believed international law applied, there could still be alternative arguments.

This historical episode in turn helps to refine a theoretical framework of multinormativity in at least one respect. It illustrates that there is some place where norms end. In 1900 some arguments foreswore all normative grounding. The principle that might makes right is not a norm. If multinormativity is to have meaning, it must illuminate the point at which norms end.

[42] There is considerable evidence that the press and missionaries had influence in the decision-making of state officials. The French Minister to China said in a catty confidential summary of his impressions of the negotiations to Foreign Minister Delcassé that U.S. policy mostly followed the prevailing winds of opinion among missionaries and in the press. Beau (1930) 366. Britain's minister in Beijing told the Foreign Ministry in January 1901 that a list of additional Chinese officials deserving punishment for crimes against missionaries in the interior derived mainly from reports from missionaries. Satow (1901) 151. The German foreign ministry attended to press coverage on the Boxer Uprising, including that in the Times of London. See, e.g., Politisches Archiv des Auswärtigen Amtes Berlin, China 24, Bd. 1, R 18275, Times (1900b).

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